

REMARKS

Applicant understands that the Replacement Page for FIG. 2 included with the response electronically entered on October 29, 2009. No new matter was being added.

Claims 1-16 remain pending in the application. Claims 1-11 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Publication No. 2004/00111040 to Ni et al. ("Ni"). Claims 12-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ni.

In summary, all claims stand rejected based upon Ni. However, Ni and the present invention are directed to solving completely different problems and each is directed to a completely different solution. Ni is directed to detecting sleep disordered breathing and does so by using a device to sense parameters indicative of sleep disordered breathing. "Various embodiments of present invention involve detecting disordered breathing ... disordered breathing is detected using the one or more sensed signals." (Ni ¶ 0007).

The present invention is directed to monitoring a patient's cardiovascular condition during treatment for sleep disordered breathing and determining changes in the cardiovascular condition of the patient. That is, in the present invention, the patient had previously been diagnosed as having sleep disordered breathing (potentially even using the Ni method), is being treated for sleep disordered breathing and, in connection with the treatment and as per the present invention, is being monitored for cardiovascular disease. Detecting sleep disordered breathing is completely different from monitoring cardiovascular condition.

The Office Action includes several citations to Ni, but none is directed to monitoring a patient for cardiovascular disease while treating the patient for sleep disordered breathing. The Office Action includes citations to the following paragraphs:

Paragraph 0050 (cited in rejections of claims 1, 5, and 13) is directed to detecting disordered breathing using an implantable or external device, but not to determining cardiovascular disease.

Paragraph 0052 (cited in rejections of claims 1, 5, 9-11, and 14-16) refers to a representative sample of signals which may be captured and which are indicative of sleep disordered breathing. The paragraph does not discuss methods for determining cardiovascular disease.

Paragraph 0053 (cited in rejections of claims 1, 3-5, and 7-11) is directed to "a set of sleep-related signals [which] may be used for sleep detection" and does not discuss detecting cardiovascular disease.

Paragraph 0054 (cited in rejections of claims 2 and 6) similarly refers only to detecting sleep disordered breathing conditions such as an apnea or a hypopnea, but not to monitoring cardiovascular disease.

Paragraph 0056 (cited in rejections of claims 1, 3-5, 7-8, and 12) details attributes of a disordered breathing detector without mentioning cardiovascular disease.

With regard to the rejection of claims 12-16, the Examiner further cited paragraph 0076 of Ni for teaching making stored data available to a physician. However, as detailed above, Ni is directed to a completely different problem and provides a completely different solution than the present invention. Paragraph 0076 is directed to attributes to include in a cardiac rhythm management system for detecting sleep

disordered breathing conditions, but paragraph 0076 does not describe detecting cardiovascular disease. The Examiner makes no reference to these claims in the Advisory Action.

One may surmise that a patient with a cardiac rhythm management system has cardiovascular disease and, in paragraph 0076, Ni is using the cardiac rhythm management system to determine if the patient has sleep disordered breathing. However, using a cardiac rhythm management system to detect sleep disordered breathing is not the present invention. In the present invention, the patient is already known to have sleep disordered breathing and is being treated for it. The present invention is directed to treating a patient for sleep disordered breathing while monitoring for cardiovascular disease.

In addition, claims 1, 5, and 9-11 are being amended to reflect that the claims are further directed to determining changes in the patient's cardiovascular condition.

The allowance of claims 1-16 and the early passage to issue of the application are respectfully requested.

Respectfully submitted,
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